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amount involved in the present action is less than \$500, and where the judgment appealed from involved the right to royalties from a slate quarry in a sum less than \$300, and it does not affirmatively appear from the appellate record that the quarry operation will continue, so that a sum greater than that amount will ever be involved, the Supreme Court of Appeals does not have jurisdiction of the appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 477; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

6. Appeal and Error (§ 503*)—Record—Jurisdiction of Appellate Court.—The jurisdiction of the appellate court must affirmatively appear from the record.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 476; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

Appeal from Circuit Court, Buckingham County.

Bill of interpleader by the Buckingham Slate Company, Incorporated, against Jennie S. Jones, A. L. Pitts, and others. Decree that defendants interplead was granted, and on the issues between them decree was entered in favor of Pitts, and Jennie S. Jones and others appeal. Appeal dismissed.

F. C. Moon, of Lynchburg, and *W. M. Justis*, for appellants.

Smith & Gordon, of Richmond, *E. W. Hubbard*, of Buckingham, *A. L. Pitts, Jr.*, of Scottsville, and *T. L. Minor*, for appellee.

CAMPBELL *v.* ALSOP'S ADM'R.

March 12, 1914.

[81 S. E. 31.]

1. Wills (§ 66*)—Contract to Devise or Bequeath—Performance.—

A widow, whose relatives other than a nephew had abandoned her, sold her dower interest in certain realty, and then contracted in writing with the nephew that, in consideration of his constructing a house, and caring for her, to give him all her other property at her death. The work of construction was begun, but was delayed, owing to the inability of the contractor to perform promptly, during which time the widow was cared for by others, at the nephew's expense, and without complaint by her, and, before the house could be erected, she suddenly died. Held, that the nephew's delay in performance did not invalidate the contract, nor deprive him of the right to the property transferred thereby.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 173, 174; Dec. Dig. § 66.* 3 Va.-W. Va. Enc. Dig. 419.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

2. Contracts (§ 261*)—Rescission—Delay in Performance.—In the absence of bad faith, a court of equity will not search for grounds to forfeit a contract, nor sustain an alleged rescission thereof for mere delay in performance, when the party in interest in the meantime has accepted substitutionary performance.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1174-1180; Dec. Dig. § 261.* 3 Va.-W. Va. Enc. Dig. 419.]

3. Executors and Administrators (§ 453*)—Action by Administrator—Relief to Defendant.—Where an administrator sued in equity to recover personal property transferred by decedent to defendant, the court, having all the parties before it, had power to direct a delivery of the property to defendant under the transfer, instead of ordering a delivery to plaintiff for purposes of administration; it appearing that there were no debts of decedent's estate.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 1884-1908; Dec. Dig. § 453.* 5 Va.-W. Va. Enc. Dig. 703.]

Appeal from Circuit Court, Caroline County.

Action by R. B. Broadbuss, as administrator of the estate of Sarah S. Alsop, deceased, against T. R. Campbell. Judgment for plaintiff, and defendant appeals. Reversed.

St. Geo. R. Fitzhugh, of Fredericksburg, and *Wm. E. Ennis*, of Bowling Green, for appellant.

Chandler & Beale, of Bowling Green, for appellee.

TABB *v.* CITY OF RICHMOND.

March 12, 1914.

[81 S. E. 34.]

1. Licenses (§ 19*)—Occupation—Agents of Fraternal Organizations.—Acts 1910, c. 291, defining and classifying industrial benefit associations, declares (section 5) that every association embraced in the first section of the act shall pay a specific license tax of \$200 per annum for the privilege of doing business in the state, and in addition \$1 on every \$200 of gross premiums, dues, or assessments collected from business within the state, which fees shall be paid in the same manner and at the same time as is required of regular life insurance companies, and such fraternal companies shall be exempt from the payment of all town, county, and municipal licenses, taxes, and fees, but that every agent, canvasser, or solicitor representing any company qualified to transact business under the act shall be subject to the laws governing agents of insurance companies. Held

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes